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ENVIRONMENTAL  
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE; )  
WASTE ACTION PROJECT; )  
WASHINGTON PUBLIC EMPLOYEES )  
FOR ENVIRONMENTAL )  
RESPONSIBILITY; RESOURCES FOR )  
SUSTAINABLE COMMUNITIES; )  
CITIZENS FOR A HEALTHY BAY; and )  
WASHINGTON ENVIRONMENTAL )  
BALANCE, INC. )

Appellants, )

v. )

DEPARTMENT OF ECOLOGY, )

Respondent, )

No.

NOTICE OF APPEAL

1. Identity of appealing parties and representative.

The appealing parties are

Puget Soundkeeper Alliance  
1415 West Dravus  
Seattle, WA 98119  
(206) 286-1309  
fax (206) 286-1082

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SMITH & LONEY, P.L.L.C.  
2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883

1 Waste Action Project  
2 P.O. Box 4832  
3 Seattle, WA 98104  
4 (206) 322-3061

5 Washington Public Employees for Environmental Responsibility  
6 P.O. Box 2618  
7 Olympia, WA 98507  
8 (360) 528-2110

9 Resources for Sustainable Communities  
10 1155 North State Street, Suite 623  
11 Bellingham, WA 98225  
12 (360) 733-8307

13 Citizens for a Healthy Bay  
14 917 Pacific Avenue, Suite 406  
15 Tacoma, WA 98402  
16 (253) 383-2429

17 Washington Environmental Balance, Inc.  
18 1212 "F" St.  
19 Centralia, WA 98531  
20 (360) 736-6078

21 The representative of the appealing parties is

22 Richard A. Smith  
23 Smith & Lowney, PLLC  
24 2317 East John Street  
25 Seattle, WA 98112  
26 (206) 860-2883  
27 fax (206) 860-4187

28 2. Identification of other parties.

29 The respondent in this appeal is the Washington State Department of Ecology.

1           3.     The decision under appeal.

2           This is an appeal of "The Industrial Stormwater General Permit – A National Pollutant  
3 Discharge Elimination System and State Waste Discharge General Permit for Stormwater  
4 Discharges Associated with Industrial Activities". A copy of this permit is attached.  
5

6           4.     Short and plain statement showing grounds for appeal.

7           Appellants consider the Industrial Stormwater General Permit to be unlawful and unfair  
8 because it does not meet the requirements or intent of the federal Clean Water Act, applicable  
9 regulations promulgated by the Environmental Protection Agency, Washington State water  
10 pollution control law, and Ecology's regulations. In violation of these various laws and  
11 regulations, the Industrial Stormwater Permit fails to require compliance with water quality  
12 standards by authorizing "standard" mixing zones in violation of applicable regulations, contains  
13 impermissible compliance schedules that have no endpoints for discharges of pollutants of  
14 concern to impaired waterbodies, fails to require adequate monitoring and reporting, and fails to  
15 require compliance with the terms of the permit in several instances.  
16  
17

18           5.     Statement of facts.

19           The Industrial Stormwater General Permit authorizes stormwater discharges from a wide  
20 range of activities from a variety of industrial facility types. There are more than 1,300  
21 dischargers that will be covered by this permit. Industrial stormwater discharges are a very  
22 substantial source of pollution and degradation of Washington waters.  
23  
24

25           The first version of this permit was issued by Ecology in 1992, the second in 1995, and  
26 the third in 2000. The 2000 permit was appealed to the Board by the same appellants who now  
27 appeal, although appellant Washington Environmental Balance, Inc. was not a participant in the  
28  
29

1 previous appeal. Appellants' challenge to the 2000 permit (PCHB No. 00-174) was resolved by a  
2 settlement between all parties.

3 The Industrial Stormwater General Permit is inconsistent with applicable legal  
4 requirements in the following ways:

5 a. Condition S3.D.2. establishes a numeric effluent limitations for discharges of  
6 pollutants of concern to impaired waterbodies (those listed under section 303(d) of the Clean  
7 Water Act) that are necessary to attain compliance with water quality standards. However, this  
8 same condition provides that a permittee failing to meet the effluent limitation is automatically  
9 allowed a "compliance schedule" and excused from violation of the effluent limitation. The  
10 "compliance schedule" is in reality a "non-compliance schedule", as it never sets a date by which  
11 compliance with numeric effluent limitations is required. In this and other ways, the S3.D.2.  
12 "compliance schedule" violates state and federal regulations on compliance schedules. In  
13 addition, the "compliance schedule" violates section 402(p)(4)(A) of the Clean Water Act, which  
14 requires compliance with water quality standards within three years of initial permit issuance for  
15 industrial stormwater dischargers.

16 b. The permit would incorporate a scheme for establishment of "standard mixing  
17 zones" that violates WAC 173-201A-100. The permit's scheme would provide for establishment  
18 of a mixing zones for permittees without Ecology first making the determinations contemplated  
19 by its regulations. The permit's scheme would also provide for establishment of mixing zones  
20 that have not been minimized or otherwise sized according to Ecology's regulations.

21 c. With respect to the permit's procedures for granting "standard mixing zones",  
22 Ecology's issuance of the permit alters qualifications and requirements relating to the privilege of  
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1 mixing zone consideration and effectively amends or repeals process requirements for making  
2 application to Ecology for a mixing zone in a permit established in WAC 173-201A-100 for the  
3 entire class of permittees that may be covered by the permit. In these respects, Ecology's  
4 issuance of the permit constitutes the making of a "procedural rule." RCW 34.05.010(16) and  
5 34.05.328(5)(c)(i). In making this procedural rule, Ecology failed to comply with the  
6 requirements of RCW Ch. 34.05.

8 d. Monitoring required by the permit is insufficient to determine compliance with  
9 effluent limitations established by the permit in violation of section 308(a) of the Clean Water  
10 Act and other applicable law.

12 e. The permit fails to require a "record summarizing the results of [visual  
13 inspections] and a certification that the facility is in compliance with the [stormwater pollution  
14 prevention plan] and the permit, and identifying any incidents of non-compliance" or to meet  
15 other requirements of 40 C.F.R. § 122.44(i)(4) and other applicable law.

17 f. By allowing Ecology to modify or waive compliance with certain conditions by  
18 making other authorization in writing, the permit is inconsistent with the requirement of WAC  
19 173-201A-080(1) that "[a]ll discharges authorized by the general permit shall be consistent with  
20 the terms and conditions of the permit" and state and federal regulations on permit modification  
21 and other applicable law. Permit conditions S2.C.2. and 3., S4.B.1., S4.C.1., and S4.H. are  
22 among those conditions with this defect.

25 g. Permit condition S4.F. provides for suspension of monitoring of discharges of  
26 pollutants of concern to impaired waterbodies in an unclear fashion that violates WAC 173-  
27 201A-080(1) and state and federal regulations on permit modification and other applicable law.  
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1 h. Noncompliance reporting conditions included in the permit, including that in  
2 condition S5.E., are inconsistent with the requirements of 40 C.F.R. § 122.41(l) and other  
3 applicable law.

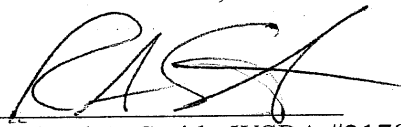
4 i. Permit fees established by Ecology for the permit are insufficient "to fully recover  
5 ... expenses incurred by [Ecology] in processing permit applications and modifications,  
6 monitoring and evaluating compliance with permits, conducting inspections, securing laboratory  
7 analysis of samples taken during inspections, reviewing plans and documents directly related to  
8 operations of permittees ... and supporting the overhead expenses that are directly related to  
9 these activities" in violation of RCW 90.48.465(1) and other applicable law.  
10

11 7. Relief requested.

12 Appellants request that the Board modify the Industrial Stormwater General Permit to be  
13 consistent with applicable legal requirements in response to the above-listed defects.  
14

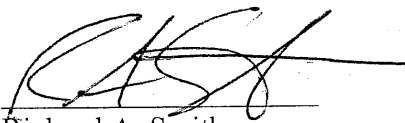
15 Dated this 19<sup>th</sup> day of September, 2002.  
16

17 SMITH & LOWNEY, PLLC

18 By:   
19 Richard A. Smith, WSBA #21788  
20 Attorneys for Appellants  
21

22 CERTIFICATE OF SERVICE

23 I, Richard A. Smith, declare that I had this Notice Of Appeal served by Federal Express  
24 next day delivery on the Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on  
25 September 19, 2002.

26   
27 Richard A. Smith  
28